

Introduced by Senator Poochigian

February 21, 2003

An act to amend Sections 6240 and 16337 of, and to add Chapter 5 (commencing with Section 16500) to Part 4 of Division 9 of, the Probate Code, relating to wills and trusts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1021, as introduced, Poochigian. Wills and trusts.

(1) Existing law provides a statutory will form and provides various hypothetical questions and answers to guide a person in using it. The existing statutory will form contains special provisions regarding the distribution of property to a person between the ages of 18 and 25 and providing for a custodian of assets under these circumstances.

This bill would revise the provisions described above regarding the distribution of property to a person between the ages 18 and 25 to make them applicable to any person under 26, and would thus permit a custodian of assets to be appointed under the statutory will form for a person under the age of 18.

(2) Existing law provides for the creation, modification, and termination of trusts, and regulates the acts of trustees in administering a trust. Existing law establishes provisions by which a trustee may give a notice of proposed action regarding certain matters.

This bill would revise and recast the provisions by which a trustee may give a notice of proposed action. The bill would enlarge the circumstances under which a notice of proposed action could be used, specify the form of the notice, to whom it is to be given, the circumstances under which it is not to be used, and the methods by which a beneficiary may object to a proposed action.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6240 of the Probate Code is amended to
2 read:

3 6240. The following is the California Statutory Will form:
4

5 QUESTIONS AND ANSWERS ABOUT THIS CALIFORNIA
6 STATUTORY WILL
7

8 The following information, in question and answer form, is not
9 a part of the California Statutory Will. It is designed to help you
10 understand about Wills and to decide if this Will meets your needs.
11 This Will is in a simple form. The complete text of each paragraph
12 of this Will is printed at the end of the Will.
13

14 1. *What happens if I die without a Will?* If you die without a
15 Will, what you own (your “assets”) in your name alone will be
16 divided among your spouse, domestic partner, children, or other
17 relatives according to state law. The court will appoint a relative
18 to collect and distribute your assets.

19 2. *What can a Will do for me?* In a Will you may designate who
20 will receive your assets at your death. You may designate someone
21 (called an “executor”) to appear before the court, collect your
22 assets, pay your debts and taxes, and distribute your assets as you
23 specify. You may nominate someone (called a “guardian”) to raise
24 your children who are under age 18. You may designate someone
25 (called a “custodian”) to manage assets for your children until
26 they reach any age between 18 and 25.

27 3. *Does a Will avoid probate?* No. With or without a Will, assets
28 in your name alone usually go through the court probate process.
29 The court’s first job is to determine if your Will is valid.

30 4. *What is community property?* Can I give away my share in
31 my Will? If you are married and you or your spouse earned money
32 during your marriage from work and wages, that money (and the
33 assets bought with it) is community property. Your Will can only
34 give away your one-half of community property. Your Will cannot
35 give away your spouse’s one-half of community property.



5. *Does my Will give away all of my assets?* Do all assets go through probate? No. Money in a joint tenancy bank account automatically belongs to the other named owner without probate. If your spouse, domestic partner, or child is on the deed to your house as a joint tenant, the house automatically passes to him or her. Life insurance and retirement plan benefits may pass directly to the named beneficiary. A Will does not necessarily control how these types of “nonprobate” assets pass at your death.

6. *Are there different kinds of Wills?* Yes. There are handwritten Wills, typewritten Wills, attorney-prepared Wills, and statutory Wills. All are valid if done precisely as the law requires. You should see a lawyer if you do not want to use this statutory Will or if you do not understand this form.

7. *Who may use this Will?* This Will is based on California law. It is designed only for California residents. You may use this form if you are single, married, a member of a domestic partnership, or divorced. You must be age 18 or older and of sound mind.

8. *Are there any reasons why I should NOT use this statutory Will?* Yes. This is a simple Will. It is not designed to reduce death taxes or other taxes. Talk to a lawyer to do tax planning, especially if (i) your assets will be worth more than \$600,000 or the current amount excluded from estate tax under federal law at your death, (ii) you own business-related assets, (iii) you want to create a trust fund for your children’s education or other purposes, (iv) you own assets in some other state, (v) you want to disinherit your spouse, domestic partner, or descendants, or (vi) you have valuable interests in pension or profit-sharing plans. You should talk to a lawyer who knows about estate planning if this Will does not meet your needs. This Will treats most adopted children like natural children. You should talk to a lawyer if you have stepchildren or foster children whom you have not adopted.

9. *May I add or cross out any words on this Will?* No. If you do, the Will may be invalid or the court may ignore the crossed out or added words. You may only fill in the blanks. You may amend this Will by a separate document (called a codicil). Talk to a lawyer if you want to do something with your assets which is not allowed in this form.

10. *May I change my Will?* Yes. A Will is not effective until you die. You may make and sign a new Will. You may change your Will at any time, but only by an amendment (called a codicil). You can



1 give away or sell your assets before your death. Your Will only acts
2 on what you own at death.

3 11. *Where should I keep my Will?* After you and the witnesses
4 sign the Will, keep your Will in your safe deposit box or other safe
5 place. You should tell trusted family members where your Will is
6 kept.

7 12. *When should I change my Will?* You should make and sign
8 a new Will if you marry, divorce, or terminate your domestic
9 partnership after you sign this Will. Divorce, annulment, or
10 termination of a domestic partnership automatically cancels all
11 property stated to pass to a former husband, wife, or domestic
12 partner under this Will, and revokes the designation of a former
13 spouse or domestic partner as executor, custodian, or guardian.
14 You should sign a new Will when you have more children, or if
15 your spouse or a child dies, or a domestic partner dies or marries.
16 You may want to change your Will if there is a large change in the
17 value of your assets. You may also want to change your Will if you
18 enter a domestic partnership or your domestic partnership has been
19 terminated after you sign this Will.

20 13. *What can I do if I do not understand something in this Will?*
21 If there is anything in this Will you do not understand, ask a lawyer
22 to explain it to you.

23 14. *What is an executor?* An “executor” is the person you
24 name to collect your assets, pay your debts and taxes, and
25 distribute your assets as the court directs. It may be a person or it
26 may be a qualified bank or trust company.

27 15. *Should I require a bond?* You may require that an executor
28 post a “bond.” A bond is a form of insurance to replace assets that
29 may be mismanaged or stolen by the executor. The cost of the bond
30 is paid from the estate’s assets.

31 16. *What is a guardian?* Do I need to designate one? If you have
32 children under age 18, you should designate a guardian of their
33 “persons” to raise them.

34 17. *What is a custodian?* Do I need to designate one? A
35 “custodian” is a person you may designate to manage assets for
36 someone (including a child) who is ~~between ages 18 and 25~~ *under*
37 *the age of 26* and who receives assets under your Will. The
38 custodian manages the assets and pays as much as the custodian
39 determines is proper for health, support, maintenance, and
40 education. The custodian delivers what is left to the person when



1 the person reaches the age you choose ~~(between 18 and 25)~~ (under
2 26). No bond is required of a custodian.

3 18. *Should I ask people if they are willing to serve before I*
4 *designate them as executor, guardian, or custodian?* Probably yes.
5 Some people and banks and trust companies may not consent to
6 serve or may not be qualified to act.

7 19. *What happens if I make a gift in this Will to someone and*
8 *they die before I do?* A person must survive you by 120 hours to
9 take a gift under this Will. If they do not, then the gift fails and goes
10 with the rest of your assets. If the person who does not survive you
11 is a relative of you or your spouse, then certain assets may go to
12 the relative's descendants.

13 20. *What is a trust?* There are many kinds of trusts, including
14 trusts created by Wills (called "testamentary trusts") and trusts
15 created during your lifetime (called "revocable living trusts").
16 Both kinds of trusts are long-term arrangements where a manager
17 (called a "trustee") invests and manages assets for someone
18 (called a "beneficiary") on the terms you specify. Trusts are too
19 complicated to be used in this statutory Will. You should see a
20 lawyer if you want to create a trust.

21 21. *What is a domestic partner?* You have a domestic partner
22 if you have met certain legal requirements and filed a form entitled
23 "Declaration of Domestic Partnership" with the Secretary of
24 State. Notwithstanding Section 299.6 of the Family Code, if you
25 have not filed a Declaration of Domestic Partnership with the
26 Secretary of State, you do not meet the required definition and
27 should not use the section of the Statutory Will form that refers to
28 domestic partners even if you have registered your domestic
29 partnership with another governmental entity. If you are unsure if
30 you have a domestic partner or if your domestic partnership meets
31 the required definition, please contact the Secretary of State's
32 office.

INSTRUCTIONS

36 1. *READ THE WILL.* Read the whole Will first. If you do not
37 understand something, ask a lawyer to explain it to you.

38 2. *FILL IN THE BLANKS.* Fill in the blanks. Follow the
39 instructions in the form carefully. Do not add any words to the Will
40 (except for filling in blanks) or cross out any words.

- 1 3. *DATE AND SIGN THE WILL AND HAVE TWO*
- 2 *WITNESSES SIGN IT.* Date and sign the Will and have two
- 3 witnesses sign it. You and the witnesses should read and follow the
- 4 Notice to Witnesses found at the end of this Will.



NOTE TO PRINTING OFFICE: INSERT CAMERA-READY
COPY HERE

for California Statutory Will

as printed on pages 40 to 45 of Chapter 893, 2001 Statutes.



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SEC. 2. Section 16337 of the Probate Code is amended to read:

16337. (a) A trustee may give a notice of proposed action regarding a matter governed by this chapter as provided in ~~this section~~ *Chapter 5 (commencing with Section 16500)*. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

~~(b) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.~~

~~(c) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.~~

~~(d) The notice of proposed action shall state that it is given pursuant to this section and shall state all of the following:~~

~~(1) The name and mailing address of the trustee.~~

~~(2) The name and telephone number of a person who may be contacted for additional information.~~

~~(3) A description of the action proposed to be taken and an explanation of the reasons for the action.~~

~~(4) The time within which objections to the proposed action can be made, which shall be at least 30 days from the mailing of the notice of proposed action.~~

~~(5) The date on or after which the proposed action may be taken or is effective.~~

~~(e) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.~~

~~(f) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.~~

~~(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with~~

~~1 modifications, or denied. In the proceeding, a beneficiary
2 objecting to the proposed action has the burden of proving that the
3 trustee's proposed action should not be taken. A beneficiary who
4 has not objected is not estopped from opposing the proposed action
5 in the proceeding. If the trustee decides not to implement the
6 proposed action, the trustee shall notify the beneficiaries of the
7 decision not to take the action and the reasons for the decision, and
8 the trustee's decision not to implement the proposed action does
9 not itself give rise to liability to any current or future beneficiary.
10 A beneficiary may petition the court to have the action taken, and
11 has the burden of proving that it should be taken.~~

12 SEC. 3. Chapter 5 (commencing with Section 16500) is added
13 to Part 4 of Division 9 of the Probate Code, to read:

14
15 CHAPTER 5. NOTICE OF PROPOSED ACTION BY TRUSTEE

16
17 16500. Subject to subdivision (d) of Section 16501, a trustee
18 may give a notice of proposed action regarding a matter governed
19 by Chapter 2 (commencing with Section 16200) or Chapter 3
20 (commencing with Section 16320) as provided in this chapter. For
21 the purpose of this chapter, a proposed action includes a course of
22 action or a decision not to take action. This chapter does not
23 preclude an application or assertion of any other rights or remedies
24 available to an interested party as otherwise provided in this part
25 regarding an action to be taken or not to be taken by the trustee.

26 16501. (a) The trustee shall mail notice of the proposed
27 action to each of the following:

28 (1) A beneficiary who is receiving, or is entitled to receive,
29 income under the trust, including a beneficiary who is entitled to
30 receive income at the discretion of the trustee.

31 (2) A beneficiary who would receive a distribution of principal
32 if the trust were terminated at the time the notice is given.

33 (b) Notice of proposed action is not required to be given to a
34 person who consents in writing to the proposed action. The consent
35 may be executed at any time before or after the proposed action is
36 taken.

37 (c) A trustee is not required to provide a copy of the notice of
38 proposed action to a beneficiary who is known to the trustee but
39 who cannot be located by the trustee after reasonable diligence or
40 who is unknown to the trustee.

(d) Notwithstanding any other provision of this chapter, the trustee may not use a notice of proposed action in any of the following actions:

- (1) Allowance of the trustee's compensation.
- (2) Allowance of compensation of the attorney for the trustee.
- (3) Settlement of accounts.
- (4) Preliminary and final distributions and discharge.
- (5) Sale of property of the trust to the trustee or to the attorney for the trustee.
- (6) Exchange of property of the trust for property of the trustee or for property of the attorney for the trustee.
- (7) Grant of an option to purchase property of the trust to the trustee or to the attorney for the trustee.
- (8) Allowance, payment, or compromise of a claim of the trustee, or the attorney for the trustee, against the trust.
- (9) Compromise or settlement of a claim, action, or proceeding by the trust against the trustee or against the attorney for the trust.
- (10) Extension, renewal, or modification of the terms of a debt or other obligation of the trustee, or the attorney for the trustee, owing to or in favor of the trust.

16502. (a) The notice of proposed action shall state that it is given pursuant to this section and shall include all of the following:

- (1) The name and mailing address of the trustee.
- (2) The name and telephone number of a person who may be contacted for additional information.
- (3) A description of the action proposed to be taken and an explanation of the reasons for the action.
- (4) The time within which objections to the proposed action can be made, which shall be at least 30 days from the mailing of the notice of proposed action.
- (5) The date on or after which the proposed action may be taken or is effective.

(b) The notice of proposed action may be given using the most current Trustee Notice of Proposed Action form prescribed by the Judicial Council.

(c) If the most current form prescribed by the Judicial Council is not used to give notice of proposed action, the notice of proposed action shall satisfy all of the following requirements:

- (1) The notice of proposed action shall be in substantially the same form as the form prescribed by the Judicial Council.

1 (2) The notice of proposed action shall contain the statements
2 described in subdivision (a).

3 (3) The notice of proposed action shall contain a form for
4 objecting to the proposed action in substantially the form set out
5 in the Judicial Council form.

6 16503. (a) A beneficiary may object to the proposed action
7 by mailing a written objection to the trustee at the address stated
8 in the notice of proposed action within the time period specified
9 in the notice of proposed action.

10 (b) A trustee is not liable to a beneficiary for an action
11 regarding a matter governed by this part if the trustee does not
12 receive a written objection to the proposed action from the
13 beneficiary within the applicable period and the other
14 requirements of this section are satisfied. If a beneficiary entitled
15 to notice does not object under this section, the trustee is not liable
16 to any current or future beneficiary with respect to the proposed
17 action.

18 (c) If the trustee receives a written objection within the
19 applicable period, either the trustee or a beneficiary may petition
20 the court to have the proposed action taken as proposed, taken with
21 modifications, or denied. In the proceeding, a beneficiary
22 objecting to the proposed action has the burden of proving that the
23 trustee's proposed action should not be taken. A beneficiary who
24 has not objected is not estopped from opposing the proposed action
25 in the proceeding.

26 (d) If the trustee decides not to implement the proposed action,
27 the trustee shall notify the beneficiaries of the decision not to take
28 the action and the reasons for the decision, and the trustee's
29 decision not to implement the proposed action does not itself give
30 rise to liability to any current or future beneficiary. A beneficiary
31 may petition the court to have the action taken, and has the burden
32 of proving that it should be taken.

